Sonja C. Grover, *Child Refugee Asylum as a Basic Human Right: Selected Case Law on State Resistance* (Springer International Publishing, 2018), $129.00 (hardcover), 245 pages, ISBN: 978-3-319-78011-5

In 2015, a single image of 3-year-old Alan Kurdi's body on a Turkish beach brought more immediate attention to the Syrian refugee crisis than any other report of mass atrocities committed by the Assad regime or ISIS ever could have. Such images are immensely impactful because they viscerally highlight the violence committed against innocent people who are trapped in protracted conflicts or similar situations. Yet the innocence of a child, and even his status as "child", often becomes a matter of dispute in asylum cases. And as much as verbal or pictorial representations of the plight of innocent children are used to draw attention towards various international crises, the specificities of legal and procedural challenges faced by children in navigating complex asylum-seeking processes have received surprisingly limited scholarly attention.[1] As such, Sonja C. Grover's book is not only a significant addition to scholarly discourse on children's experiences in navigating asylum-seeking processes, it's also a particularly timely contribution in light of the hostile political atmosphere and exclusionary policies that are currently denying rights of protection to refugees and vulnerable migrants in many host countries.

Grover's main argument is that child refugee asylum-seekers, both as individuals and as a collective, deserve additional protection and special consideration in the asylum-seeking process since, by virtue of being children and refugees, they belong to a particularly vulnerable subgroup of an already vulnerable population. Moreover, and just as emphatically, Grover argues that if international rule of law is to mean anything, then states have a positive responsibility to protect child refugee asylum-seekers. Her in-depth analysis of case law demonstrates that current practices in many states are inconsistent with proper interpretation of various branches of international law pertaining to child refugees, and may even amount to a derogation, in effect, from customary and *jus cogens* obligations such as non-refoulement and protection against inhuman and degrading treatment.

With the core arguments and objectives laid out in the introduction, the subsequent four chapters examine pertinent case law that highlights the challenges arising from various states' policies, action/inaction, or (purposeful) misinterpretation of laws, all of which adversely impact child refugee asylum-seekers' abilities to seek asylum. Chapter 2 asserts that a fair assessment of a child's asylum claim must give due consideration to children's individual human rights *and* their human rights as members of the *intersecting* collectives to which they belong. In theory this appears to be an obvious enough argument, yet her analysis of three cases shows that in practice states' tendency to ignore or deny the rights of collectives results in the effective undermining of individual rights of members of those collectives. In other words, fair consideration of individual human rights is predicated on the consistent recognition of human rights of collectives to which individuals belong. The significance of this argument is most clearly manifested in the analysis of JA v. UK Secretary of State, a case that involved the denial of asylum to a UK-born Nigerian

[1] Academics and professionals in social work and related fields have contributed a greater deal to scholarship focused on the special needs of children in refugee/IDP camps or in the process of resettlement. See: Ravi Kohli, *Social Work with Unaccompanied Asylum-Seeking Children*, (New York; Houndmills, Basingstoke, Hampshire;: Palgrave Macmillan, 2007). Emma Kelly and Farhat Bokhari, *Safeguarding Children from Abroad: Refugee, Asylum Seeking and Trafficked Children in the UK.* (London; Philadelphia;: Jessica Kingsley Publishers, 2012). For examples of scholarly work specifically focused on legal and procedural challenges facing refugee asylum-seeking children, see: Jacqueline Bhabha and Mary Crock, *Seeking Asylum Alone: Unaccompanied and Separated Children and Refugee Protection: A Comparative Study of Laws, Policy and Practice in Australia, The United Kingdom and the United States of America*. Sydney, (Australia: Themis Press, 2007). Jason M. Pobjoy, *The Child in International Refugee Law*, Cambridge Asylum and Migration Studies, (Cambridge: Cambridge University Press, 2017).

child with albinism.[2] Upon appeal, the Upper Tribunal found that the child's individual human rights were disregarded in the first instance, when his case was not considered independent of his mother's. This was exacerbated when the child's claim was denied on the basis that recognising his claim would set a precedent for all Nigerians with albinism to seek asylum in the UK. While the Upper Tribunal corrected the initial wrong by upholding the child's right to asylum, it framed its judgement such that it could not be relied upon as precedent by others similarly situated. Consequently, the Upper Tribunal's decision precluded prima facie recognition for other children in similar intersecting collectives (albino, Nigerian, children, refugees), who will on that account have to re-litigate and prove the legitimacy of their cases on an entirely case-by-case basis.

If Chapter 2 highlights state failure to take a holistic view of children's social locations as individuals and as members of vulnerable collectives, Chapter 3 demonstrates remarkably negligent and/or purposefully harmful strategies that are meant to extend extraterritorial control over prospective asylum-seekers, or to push back asylum-seekers who have already arrived at the border. 'Pushback' or 'extraterritorial control' strategies essentially return refugees to or block their movement out of transit states where they are likely to face persecution by virtue of being refugees. Given a prospective asylum state's exercise of de facto jurisdiction over asylum-seekers, this is in effect a type of refoulement (to refugee camps in transit states) and derogation from *jus cogens* obligations to protect refugees from degrading and inhuman condition. As such, these strategies reflect not merely the misinterpretation of law, they are also unabashed efforts that effectively undermine the international rule of law.

Ironically, strategies that actually amount to violations of basic and universally accepted international customary norms (i.e. non-refoulement and protection against inhuman and degrading treatment) are usually presented as necessary for proper adherence to legal process. This is most evident in UK Secretary of State (SSHD) v. ZAT (Syria), where the SSHD challenged the Upper Tribunal's decision to bypass Dublin III Regulations on humanitarian grounds to let three Syrian children and a disabled adult into the UK pending a decision on their asylum application. The Court of Appeal upheld the Upper Tribunal's decision as it applied to this case, but it also remarked that the Upper Tribunal wrongfully bypassed proper procedures outlined in the Dublin III Regulations on humanitarian grounds.[3] Given the ongoing influx of asylum seekers, the Court held that humanitarian considerations could not be prioritized over

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[2] The child's mother, who had lived in the UK for some time, made an asylum request on behalf of her son. The government argued that fear of persecution was not sufficiently established because, based on overall statistics, the risk of kidnapping and murder of albinos was more of a remote possibility than a real risk. The government also reasoned that risk of discrimination should not be conflated with risk of persecution because doing so would entitle a large number of albinos in Nigeria to refugee status. Regardless of the overall statistics, the Upper Tribunal (UT) held, based on expert evidence, that the risk of ritualistic murder and dismemberment of persons with albinism was increasing. Moreover, the UT emphasized the special vulnerabilities of children as outlined in the Convention on the Rights of the Child in order to properly establish the risk of persecution. The risk of persecution was seen to be particularly acute for a UK-born Nigerian child who had not previously experienced discrimination due to his condition. Grover takes issue with the UT's last argument as it incorrectly assumes that albino children born and raised in Nigeria don't experience persecution in the same way as a UK-born Nigerian child with albinism would. [58-62]

[3] The applicants had been living in the Calais Camp in France. Before the applicants made an asylum claim to the UK, their siblings, who had refugee status in the UK, made a case for them. The UT allowed for this anomaly in procedure on humanitarian grounds [79]. Grover points out that within the Dublin III regulatory scheme there is room for making such exceptions [77]. However, the Court of Appeal held that exceptions to the procedure could only be made when applicants attempted to follow the usual protocol, and that the applicants in this case had failed to do so by not seeking support from the French authorities first [80].

consistent application of official procedures. To prove her point, Grover analyzes the fate of post-ZAT asylum applicants, who were subjected to this insurmountable blanket denial.

Grover is especially persuasive in Chapters 2 and 3 because she emphasizes *overlapping* human rights obligations (rather than obligations under any specific convention(s)) arising from various domains of international law that require states to view children as individuals and as members of certain collectives. By taking this approach, Grover effectively sidesteps challenges that arise from the fact that certain treaties have not been ratified by important states (notably the US).[4] Moreover, when problematizing state practices, Grover focuses primarily on state responsibility with regards to universally accepted customary and *jus cogens* norms of non-refoulement and protection from inhuman and degrading treatment. These norms are so widely accepted that even where a given state has not ratified a particular treaty it cannot, in good faith, neglect its obligations towards child refugee asylum seekers if doing so violates customary and *jus cogens* norms.

The fourth chapter presents an interesting, if somewhat less convincing argument, that recognizing child refugee asylum seekers in general, and unaccompanied child refugee asylum seekers in particular, as a persecuted social group as per Convention definition of a 'particular social group' is essential to alleviating the problems faced by said group(s) [115]. Grover views 'pushback' and 'extraterritorial control' strategies as forms of persecution and/or refoulement in themselves; therefore, viewing 'unaccompanied child refugee asylum seekers' as a 'particular social group' lends support to Grover's view to the extent that individuals belonging to this category are disproportionately impacted by 'pushback' and 'extraterritorial control' strategies. However, Grover admits that "even if the existence of the particular social group for the purposes of establishing a Convention ground for refugee status is acknowledged by the State; the particular individual refugee asylum seeker's *truthful claim to membership in that ... group may be rejected without proper basis*" (emphasis added) [125]. If states can simply deny an individual's membership to a particular social group, then the efficacy of defining unaccompanied children as a Convention social group is questionable. To clarify, this section of the book focuses on challenges faced by older children (approximately 12-18 year-olds), whose claim that they are children is often disputed by states. While Grover clearly demonstrates that older children are uniquely vulnerable to experiencing persecution in the form of immigration detention and refoulement to transit states, she is less clear on how defining 'unaccompanied child refugee asylum seekers' as a group will compel states to make better and prompt age assessments of children prior to detention.

The fifth chapter cogently highlights the systemic challenges of seeking asylum in the US faced by unaccompanied Central American children. Grover cites a lack of legal support for unaccompanied child refugee asylum seekers, which results in violations of the principle of due process occurring frequently and at every level of the asylum-seeking process [162], to argue that certain US policies towards Central American children amount to "constructive refoulement" [157]. Constructive refoulement refers to policies that may not directly ban refugees, but that effectively result in the return of certain refugees to their country of origin or to a transit state. What makes these policies distinctly problematic – compared to the examples of individual state agents misinterpreting asylum laws as seen in previous chapters – is that they create insurmountable systemic barriers[5] which result in a virtual blanket bar on entry or expedite return of certain classes of asylum-seekers.

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[4] For example, the US has only ratified the 1968 Additional Protocol to the Refugee Convention but not the 1951 Convention itself. The US has also not ratified the Convention on the Rights of the Child.

[5] To explain how systemic barriers, in effect, result in constructive refoulement of child refugee asylum seekers, Grover examines the decision of the US Federal Court of Appeals for the Ninth district on the J.E. F.M. v. Lynch (U.S. Attorney General). In this class action suit, a group of children going through

In the final chapter, Grover returns to an idea that is implicitly rejected throughout the book: refugees are either persons beyond the sovereign protective jurisdiction of any state, or they exist in a legal grey area where no law fully applies. This is in fact a 'legal fiction' in the context of democratically based national or regional law, and certainly in the context of international rule of law [225]. The asylum seeker cannot be beyond a democratic state's positive duty to protect, especially where denial of this duty amounts to refoulement in practice. Non-refoulement, as set out in Article 33, is perhaps the most important principle of the Refugee Convention. The Convention defines returning as expulsion or return in *any manner* whatsoever to the *frontiers of territories* where the refugee's life or liberty would be threatened.[6] Thus, a state's deliberate attempts to place certain refugees beyond its protective jurisdiction are simply against the spirit of the Convention. If anything, Grover argues that once a state exercises its jurisdiction to accept or deny a refugee's claim to asylum for processing, it effectively controls the asylum seeker's fate [227]. Thus, paradoxically, 'pushback' and 'extraterritorial control' measures, instead of preventing an asylum-seeker's entry into a state's jurisdiction, end up establishing a state's jurisdiction over said asylum-seeker. This is an incredibly powerful normative argument, but one that is, unfortunately, difficult to put into practice, since the notion of positive responsibility to protect falls flat without a discussion of mechanisms of accountability.

Admittedly, pointing to an absence of international mechanisms of accountability would be a rather unoriginal critique of Grover's argument. However, the issue is not just the lack of enforcement mechanisms in several aspects of international law; rather, even if there were an international tribunal where decisions on asylum claims could be challenged, a positive duty to protect is harder to conceive as a justiciable issue. Grover presents the notion of positive responsibility to protect asylum-seekers as a "logical corollary of the universal jurisdiction to hold accountable the perpetrators" of mass atrocities [6]. While holding perpetrators of human rights violations accountable entails connecting specific persons to specific actions, the positive responsibility to protect the human rights of refugees is often violated due to the *inaction* of officials on several levels of the asylum-seeking processes. This is evident in Grover's discussion of "Queen on the application of MK, IK and HK v. UK SSHD", a case in which the home department refused a take-charge request from France on the basis of insufficient evidence to prove that the child applicants were biological children of the female applicant who was a resident of the UK. The Upper Tribunal conceded that the SSHD had a positive duty to arrange for DNA testing in order to legitimately accept or deny the take-charge request form France [106]. However, for Grover's argument about positive responsibility to hold true more generally and more consistently we would have to simply hope that states choose to hold themselves accountable to rules they have created.

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deportation proceedings argued that their rights to due process were infringed because of a lack of pro bono legal assistance available during their immigration hearings [166]. The court held that according to US law the right to legal assistance requested by the children could only be availed during the appeals process which *arises from* the Immigration proceedings *after* a child's deportation order is issued [167]. This creates a 'catch-22' for unaccompanied children, since without legal assistance the facts of their cases aren't recorded properly in the immigrations proceedings, and that in turn makes it impossible to mount a successful appeal to a deportation order at the Federal Court of Appeals [170-3]. Grover sees the lack of proper legal representation as a reflection of systemic bias against children who are not viewed as active informed participants in their own asylum proceedings; therefore, by limiting children's access to proper legal support, states tend to further restrict their active participation in the process by design [165].

[6] Note that the phrase 'frontiers of territories' suggests refoulement is not only returning to country of origin, but also to any territory where the refugee would face risk of persecution. *Convention Relating to the Status of Refugees*, July 1951, UNTS, vol. 189 art 33 (entered into force 22 April 1954)